

## § 1940.401

b. *Information exchange.* FmHA or its successor agency under Public Law 103-354 State Directors will develop with ASCS State Executive Directors a system for FmHA or its successor agency under Public Law 103-354 to routinely receive notification whenever a violation has occurred under ASCS's wetland and highly erodible land conservation restrictions. FmHA or its successor agency under Public Law 103-354 State Directors will in turn provide to any interested USDA agency the following information:

(1) Upon request, copies of site information or exemption decision made by SCS for FmHA or its successor agency under Public Law 103-354 application reviews;

(2) Upon request, copies of exemption decisions made by FmHA or its successor agency under Public Law 103-354; and

(3) Notice of any violations of the provisions of this exhibit identified by FmHA or its successor agency under Public Law 103-354 as a result of the monitoring activities identified in paragraph 10 of this exhibit.

14. *Relationship of the requirements of this exhibit to the wetland protection requirements of exhibit C of this subpart.* The provisions of this exhibit determine (a) whether or not an applicant for a Farmer Program insured or guaranteed loan or a loan to an Indian Tribe or Tribal Corporation is eligible to be considered for such a loan, and (b) whether or not a recipient of such a loan is properly using the loan proceeds with respect to the requirements of this exhibit. On the other hand, the requirements in exhibit C of this subpart regarding wetland protection cover all FmHA or its successor agency under Public Law 103-354 loan and grant programs and address not questions of eligibility but the potential environmental impacts of a proposed action on a wetland and alternatives to the action. Consequently, those applications covered by this exhibit and which may be approved under this exhibit must also meet the requirements of exhibit C of this subpart. For example, an application covered by this exhibit (M) that proposed to convert a wetland into a tree farm would be exempt from this exhibit (M) because trees are not an agricultural commodity, i.e., there is no conversion in order to produce an agricultural commodity. However, before FmHA or its successor agency under Public Law 103-354 could make the loan, the requirements of exhibit C of this subpart would have to be met to include an FmHA or its successor agency under Public Law 103-354 finding that no practicable alternative exists to the conversion of the wetland. In summary, any proposed wetland conversion that is not prohibited by this exhibit (M) must next meet the requirements of exhibit C of this subpart before FmHA or its successor agency under

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Public Law 103-354 approval of the requested financial assistance could be provided.

[53 FR 7333, Mar. 8, 1988, as amended at 53 FR 14778, April 26, 1988]

### Subpart H [Reserved]

### Subpart I—Truth in Lending—Real Estate Settlement Procedures

SOURCE: 48 FR 4, Jan. 3, 1983, unless otherwise noted.

#### § 1940.401 Truth in lending.

(a) *General.* This section provides instructions for compliance with the Truth in Lending Act, as implemented by Regulation Z of the Federal Reserve System, to assure that individual Rural Housing (RH) applicants are informed of:

(1) The cost and terms of credit, and

(2) Their right to cancel certain credit transactions resulting in a lien or mortgage on their home.

(b) *Scope.* This section applies to all individuals who apply for loans, assumptions, or credit sales (hereafter described as transactions) for household purposes.

(1) Special rules for the right to cancel transactions not for purchase, acquisition or initial construction of a home broaden the scope of this section to include individuals who have an ownership interest in, and reside in as a principal dwelling, property which will be security for a mortgage, even though they may not execute the promissory note or assumption agreement. Such persons have the right to receive credit disclosures and the notice of the right to cancel and may cancel the transaction.

(2) This section does *not* apply to:

(i) Applicants who are corporations, associations, cooperatives, public bodies, partnerships, or other organizations;

(ii) Individual applicants for multiple family housing transactions (rural rental or labor housing), unless for a two-family dwelling in which the applicants will reside, and other business and commercial type loans; or

(iii) Applicants involved in credit transactions primarily for agricultural purposes.

(c) *Disclosure of the cost and terms of credit*—(1) *Form and content.* Form FmHA or its successor agency under Public Law 103-354 1940-41, "Truth in Lending Disclosure Statement," will be used to provide the following required disclosures:

- (i) Annual percentage rate;
- (ii) Finance charge;
- (iii) Amount financed;
- (iv) Total of payments;
- (v) Total sale price (required for credit sales only);
- (vi) Payment schedule;
- (vii) A separate itemization of the amount financed, if the applicant requests it. Normally this required disclosure will have been met in transactions subject to the Real Estate Settlement Procedures Act (RESPA) by providing the applicant with Form FmHA or its successor agency under Public Law 103-354 440-58, "Estimate of Settlement Costs";
- (viii) The lender's identity;
- (ix) Prepayment or late payment penalties;
- (x) Security interest;
- (xi) Insurance requirements;
- (xii) Assumption policy; and
- (xiii) Referral to other loan documents.

(2) *Timing, use of estimates and required redisclosure.* (i) In transactions for the purchase or construction of a home subject to RESPA, Form FmHA or its successor agency under Public Law 103-354 1940-41, completed using "good faith" estimates based on the best information available, will be delivered or placed in the mail to the applicant no later than three (3) business days after receipt of a written application in the County Office.

(ii) In transactions *not* subject to RESPA, such as RH Section 502 transactions for repairs or refinancing or RH Section 504 transactions, Form FmHA or its successor agency under Public Law 103-354 1940-41, completed using the actual terms of the transaction, will be delivered to each applicant (and in transactions which are subject to cancellation, each non-applicant with the right to cancel) at the time of loan approval.

(iii) In the event of a change in rates and terms between the time of initial disclosure and closing, whereby the an-

nual percentage rate varies by more than one-eighth of one percent, redisclosure must be made. This may be done by entering the changes on all copies of the initial Form FmHA or its successor agency under Public Law 103-354 1940-41, or by preparing a new Form FmHA or its successor agency under Public Law 103-354 1940-41. When required, redisclosure may be made at the time the transaction is approved or at the time of the change, but the form must be delivered to the applicant before the signing of the promissory note or assumption agreement.

(3) *Special instructions for assumption, reamortization, refinancing and multiple transactions.* (i) Assumptions, within the scope of paragraph (b) of this section, at new rates and terms or of existing obligations which were for purchase, acquisition or initial construction of a residence, require new credit disclosure before the assumption occurs. Since assumptions are not subject to RESPA, early disclosure is not required.

(ii) Reamortization, as described in 7 CFR part 3550, when the borrower is in default or delinquent, does not require new credit disclosure. In all other cases reamortization requires new credit disclosure.

(iii) Refinancing of debts in accordance with 7 CFR part 3550, though not subject to RESPA or early disclosure, does require credit disclosure at the time the transaction is approved.

(iv) Multiple transactions.

(A) When a subsequent loan is financed along with another transaction and both transactions require credit disclosure, a separate Form FmHA or its successor agency under Public Law 103-354 1940-41 will be prepared for each transaction.

(B) Transactions with multiple advances will be treated as one transaction for the purpose of credit disclosure, in accordance with the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103-354 1940-41.

(d) *Notice of the right to cancel.* The right to cancel applies only to transactions within the scope of paragraph (b) of this section, which are *not* for purchase, acquisition or initial construction of *and* which result in a

mortgage on an individual's principal residence, such as RH Section 502 transactions for refinancing, repairs or rehabilitation or RH Section 504 transactions.

(1) *Form and Content.* Form FmHA or its successor agency under Public Law 103-354 1940-43, "Notice of Right to Cancel", will be used to notify individuals of their right to cancel those transactions, within the scope of paragraphs (b) and (d) of this section, which result in a mortgage on their principal residence *except* when the transaction is for its purchase or initial construction. This notice will identify the transaction and disclose the following:

- (i) The acquisition of a security interest in the individual's principal residence.
- (ii) The individual's right to cancel the transaction.
- (iii) How to exercise the right to cancel the transaction, with a form for that purpose.
- (iv) The effects of cancellation.
- (v) The date the cancellation period expires.

(2) *Timing.* (i) Two copies of Form FmHA or its successor agency under Public Law 103-354 1940-43, and one copy of Form FmHA or its successor agency under Public Law 103-354 1940-41, in accordance with the FMI's, will be given to each individual entitled to cancel, not later than loan closing.

(ii) Any entitled individual may cancel the transaction until midnight of the third business day following whichever of the following events occurs last:

- (A) The date the transaction is closed.
- (B) The date Truth in Lending credit disclosures were made.
- (C) The date notice of the right to cancel was received.

(3) *Disbursement of funds.* In a transaction subject to cancellation funds will not be disbursed, other than to a designated attorney or title insurance company preparatory to closing, until:

- (i) Forms FmHA 1940-43 have been given to the appropriate individuals,
- (ii) The three-day cancellation period has expired, and
- (iii) The loan approval official is reasonably assured that the transaction

has not been cancelled. This assurance may be obtained by:

(A) Waiting a reasonable period of time after the expiration of the cancellation period to allow for the delivery of a mailed notice, or

(B) Obtaining a written statement from each individual entitled to cancel that the right has not been exercised.

(iv) This delay in disbursing funds may be waived in cases of a bonafide personal financial emergency, which must be met within the cancellation period, when the individual submits a signed and dated statement describing the nature of the emergency and waiving the right to cancel. Such a statement must be signed by all individuals entitled to cancel.

(4) *Effects of cancellation.* (i) When an individual cancels a transaction, the mortgage securing the transaction becomes void and the borrower will not be liable for any amount, including any finance charge.

(ii) Within twenty (20) calendar days after receipt of a notice of cancellation the loan approval official will:

(A) Notify all interested parties of the cancellation;

(B) Return, and/or request the return of any money or property given to anyone in connection with the transaction; and

(C) Take the necessary action to terminate the mortgage.

(iii) Once evidence has been presented to the borrower that the mortgage has been terminated, the borrower must return any funds advanced by FmHA or its successor agency under Public Law 103-354 to the FmHA or its successor agency under Public Law 103-354 County Office or surrender any property at his/her residence within twenty (20) calendar days.

(e) *Advertisements.* An *advertisement* is defined as a commercial message in any medium that promotes, directly or indirectly, a credit transaction. Advertisements for credit sales of Government inventory property, within the scope of paragraph (b) of this section, are subject to the following requirements.

(1) If an advertisement states specific credit terms, it shall state only those terms that actually are or will be arranged or offered.

(2) If an advertisement states a rate of finance charge, it shall state the rate as an *annual percentage rate*, using that term.

(3) Terms requiring additional disclosures.

(i) If any of the following terms is set forth in an advertisement:

(A) The amount or percentage of any down payment,

(B) The number of payments or period of repayment,

(C) The amount of any payment, or

(D) The amount of any finance charge,

(ii) The advertisement must also state:

(A) The amount or percentage of down payment,

(B) The terms of repayment, and

(C) The *annual percentage rate*, using that term.

[48 FR 4, Jan. 3, 1983, as amended at 60 FR 55123, Oct. 27, 1995; 67 FR 78328, Dec. 24, 2002]

#### §§ 1940.402–1940.405 [Reserved]

#### § 1940.406 Real estate settlement procedures.

(a) *General.* This section provides the instructions for compliance with the Real Estate Settlement Procedures Act (RESPA), as amended, and Regulation X of the Department of Housing and Urban Development.

(b) *Scope.* (1) This section applies to loans and credit sales, including Section 502 Rural Housing, 1-4 family Rural Rental Housing, 1-4 family Labor Housing, and Farm Ownership involving tracts of less than 25 acres, whether made to an individual, corporation, partnership, association or other entity, which meet the following requirements:

(i) The proceeds of the loan or the credit extended are used in whole or in part to finance the purchase and transfer of title of the property to be mortgaged by the borrower, and

(ii) The loan or credit sale is secured by a first lien covering real estate on which is located a structure designed principally for the occupancy of from 1-4 families, or on which a structure designed principally for the occupancy of from 1-4 families is to be constructed using proceeds of the loan.

(2) Exempt transactions include:

(i) Loans for repairs, improvements, or refinancing if the proceeds are not used to finance the purchase of the property.

(ii) Loans to finance the construction of a 1-4 family structure if the tract of land is already owned by the applicant/borrower.

(iii) Assumptions or transfers.

(c) *Action required.* (1) The information booklet entitled "Settlement Costs" will either be given to the applicant at the time the completed application is received, or mailed to the applicant no later than three (3) business days after receipt of the application in the County Office.

(i) Form FmHA or its successor agency under Public Law 103-354 440-58, "Estimate of Settlement Costs," is to be used to provide a "good faith" statement of estimated closing costs. Form FmHA or its successor agency under Public Law 103-354 440-58 will be completed by the County Supervisor and mailed or delivered to the applicant with the Settlement Costs booklet. Costs will vary between geographic areas; therefore, information supplied on this form must be based upon (A) the County Supervisor's best estimate of charges the borrower will pay for each service in connection with the transaction, or (B) a range of charges at which such service is available to the borrower from all providers in the area.

(ii) Form FmHA or its successor agency under Public Law 103-354 440-58 does not replace Truth in Lending forms. Appropriate forms listed in § 1940.401 will be used for Truth in Lending purposes.

(2) Form FmHA or its successor agency under Public Law 103-354 1940-59, "Settlement Statement," will be completed as indicated in the form and FMI by the designated attorney or title company for all transactions described in paragraph (b) of this section. The purpose of this form is to provide a uniform settlement statement prescribed by RESPA.

(i) During the business day immediately preceding the date of settlement, the closing agent, if requested by